IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

TIMOTHY ALLEN EAST,
Appellant.

No. 2 CA-CR 2013-0531
Filed December 1, 2014

Appeal from the Superior Court in Pima County
No. CR20124397001
The Honorable Casey F. McGinley, Judge Pro Tempore

AFFIRMED

COUNSEL

Thomas C. Horne, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Jana Zinman, Assistant Attorney General, Phoenix
Counsel for Appellee

Lori J. Lefferts, Pima County Public Defender
By Michael J. Miller and David J. Euchner,
Assistant Public Defenders, Tucson
Counsel for Appellee

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Timothy East was convicted after a jury trial of one count of possession of a deadly weapon by a prohibited possessor and sentenced to an enhanced, mitigated term of 7.5 years' imprisonment. On appeal, he contends the trial court erred by denying his motion to suppress a gun and other evidence discovered after a police officer opened the door to a car in which East was sleeping. For the following reasons, we affirm the trial court's ruling.

Factual and Procedural Background

¶2 Because East's only claim of error is the denial of his motion to suppress, we focus on the testimony presented at the suppression hearing. Although the record is reasonably subject to different interpretations, we view the facts in the light most favorable to sustaining the trial court's ruling. *See State v. Gonzalez*, 235 Ariz. 212, ¶ 2, 330 P.3d 969, 970 (App. 2014). At about 7:30 a.m. on November 2012, Tucson Police Officer Chrispen responded to a 9-1-1 call in which the caller had reported a person "passed out" in the driver's seat of a car parked in front of a convenience store. Chrispen stopped his patrol vehicle behind the car, which was parked diagonally away from the marked parking spaces. Chrispen provided the car's out-of-state license plate number to the police dispatcher and received "no return," which sometimes happens when an expired license plate is placed on a stolen car. Pedestrians

and other vehicles were in the vicinity at the time, as shoppers entered and exited the store.

¶3 Officer Chrispen walked up to the vehicle, which was still running, and saw East leaned back in the driver's seat with his eyes open and "his pupils rolled back in his head." Chrispen could see the whites of East's eyes and "thought something was wrong," because East's posture was "not a normal sleeping position." Chrispen then opened the car door.[1]

¶4 East did not respond to the car door being opened and Officer Chrispen attempted to arouse him by speaking to him. East eventually awoke and leaned forward, appearing groggy and disoriented. Chrispen attempted to have East turn off the car, but he reached for the gear shift, repeatedly shifted it in and out of gear, and drove the car forward a short distance. East eventually put the car in park, and Chrispen ordered him to turn off and exit the vehicle. While East was getting out of the car, Chrispen saw a gun on the floorboard. He later discovered that East was a prohibited possessor and a warrant had previously been issued for his arrest. It also was discovered the car had been stolen.

¶5 East was charged with theft of means of transportation, third degree burglary, and possession of a deadly weapon by a prohibited possessor. On the state's motion, the court dismissed the first two counts because the victim was unavailable. East was convicted and sentenced as described above, and this appeal followed.

Motion to Suppress

¶6 East argues the trial court erred in applying the community-caretaker exception to the Fourth Amendment in

[1]Officer Chrispen initially said he did not remember if he knocked before opening the car door, but after viewing a surveillance video from the front of the store, he agreed that he did not knock.

denying his motion to suppress evidence found during his encounter with the officer.[2] Although we review a denial of a motion to suppress for an abuse of discretion, we review constitutional and purely legal issues de novo. *State v. Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d 787, 790 (App. 2007).

¶7 Generally, in order to search or seize a person, law enforcement officers must have a valid warrant based on probable cause. *State v. Organ*, 225 Ariz. 43, ¶ 11, 234 P.3d 611, 614 (App. 2010); *see also Cady v. Dombrowski*, 413 U.S. 433, 439 (1973). But because the Fourth Amendment prohibits only unreasonable searches, there are certain exceptions to the warrant requirement. *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006). The Supreme Court has recognized one such exception for actions taken pursuant to law enforcement's "community caretaking" function. *Cady*, 413 U.S. at 441-42. This exception arises out of frequent contact between police and citizens when automobiles have been involved in accidents or become disabled. *Id.* at 441. Such contact is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Id.*

¶8 The standard under the community-caretaker exception is reasonableness, that is, whether "'a prudent and reasonable officer [would] have perceived a need to act in the proper discharge of his or her community caretaking functions.'" *Organ*, 225 Ariz. 43, ¶ 15, 234 P.3d at 615, *quoting People v. Ray*, 981 P.2d 928, 937 (Cal. 1999). Those functions include helping citizens in distress, preventing potential harm, and providing a variety of services for the safety of the community. *State v. Mendoza-Ruiz*, 225 Ariz. 473, ¶ 9, 240 P.3d 1235, 1237 (App. 2010).

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[2]East also argues the emergency-aid doctrine did not apply and Officer Chrispen lacked reasonable suspicion to open the car door. Because we resolve the issue relying on the community-caretaker doctrine, we do not address East's additional arguments.

¶9 To determine whether the particular warrantless intrusion is permissible pursuant to an officer's caretaking function, we consider whether the search or seizure is

> "suitably circumscribed to serve the exigency which prompted it. . . . The officer's . . . conduct must be carefully limited to achieving the objective which justified the [search]—the officer may do no more than is reasonably necessary to ascertain whether someone is in need of assistance [or property is at risk] and to provide that assistance [or protect that property]."

Organ, 225 Ariz. 43, ¶ 14, 234 P.3d at 615, *quoting In re Tiffany O.*, 217 Ariz. 370, ¶ 21, 174 P.3d 282, 288 (App. 2007) (alterations in *Tiffany O.*). The community-caretaker exception does not, however, require the least-intrusive means of making contact. *Cady*, 413 U.S. at 447 ("The fact that the protection of the public might, in the abstract, have been accomplished by 'less intrusive' means does not, by itself, render the search unreasonable."). The community-caretaker exception applies both when a danger is posed to the public at large and when the driver himself may need assistance. *See, e.g.*, *State v. Becerra*, 231 Ariz. 200, ¶¶ 10-11, 291 P.3d 994, 997-98 (community-caretaker exception applies to officer stopping car that posed danger to other drivers because of non-functioning tail lights); *Organ*, 225 Ariz. 43, ¶¶ 17-18, 234 P.3d at 615 (community-caretaker function includes checking on motorists who appear to be stranded).[3]

[3]In arguing the community-caretaker doctrine does not apply, East appears to contend that any concerns about his own health status should be separately analyzed under the "emergency-aid" doctrine, instead of the community-caretaker doctrine. However, as noted, application of the community-caretaker doctrine is not limited to dangers posed to the outside public. *See, e.g.*, *Organ*, 225 Ariz. 43, ¶¶ 17-18, 234 P.3d at 615.

¶10 First, we address whether a search or seizure occurred the moment Officer Chrispen opened the door. The trial court never determined at what point a search or seizure began, and considered facts both before and after Chrispen had opened the door in determining whether the community-caretaker exception applied.[4] Similarly, on appeal, the state fails to address separately the facts occurring before and after the car door was opened. We assume for the purposes of addressing East's argument that a search began when Chrispen opened the door.

¶11 At the time Officer Chrispen opened East's car door, the facts known to him were as follows: someone had called 9-1-1 and reported that a person was "passed out" in a car in a parking lot; the car was running, parked diagonally outside established parking spaces; shoppers were in the vicinity; East was leaning back in an abnormal sleeping position; and, on closer inspection through the window his pupils were rolled back in his head so Chrispen could see the whites of his eyes. Given the specific facts here, it was reasonable for Chrispen to believe East may have needed medical assistance, or that he posed a danger to pedestrians and drivers if the car started moving again. *See Organ*, 225 Ariz. 43, ¶¶ 17-18, 234 P.3d at 615; *see also Mendoza-Ruiz*, 225 Ariz. 473, ¶ 9, 240 P.3d at 1237.

¶12 East argues Officer Chrispen acted unreasonably by not knocking on the window before opening the door, relying on *Mundy v. Commonwealth*, 342 S.W.3d 878 (Ky. Ct. App. 2011). There, the Kentucky Court of Appeals concluded it was unreasonable for an officer to open a door without knocking first when a person was sleeping in a car and breathing oddly. *Id.* at 885-86. But *Mundy* is inapposite.[5] In that case there was no 9-1-1 call regarding the

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[4]In a motion for reconsideration of his motion to suppress, East argued the trial court failed to rule on whether the officer's actions in opening the door were reasonable. The trial court denied the motion.

[5]As East notes, *Mundy* is analyzed under the "emergency aid" exception rather than the "community caretaker" doctrine. 342 S.W.3d at 885-86. The two exceptions have similar limitations, in

driver's safety, Mundy's car was not running, and it was legally parked. *Id.* Additionally, the *Mundy* court distinguished the facts in that case from one in which there may be an emergency, such as "a person becoming ill or experiencing a medical emergency who abruptly pulls over or passes out with the engine running and the headlights activated." *Id.* at 866. Indeed, this case is more similar to other cases in which the position of the vehicle and its operational status present a danger to the driver and others until the vehicle is moved and the motor turned off. *See, e.g., State v. Smith*, 540 N.W.2d 374, 379-80 (Neb. Ct. App. 1995) (opening car door to rouse driver and place car into gear reasonable where driver was stopped at intersection slumped over steering wheel); *see also State v. Roussell*, 770 A.2d 858, 860-61 (R.I. 2001) (opening passenger-side door reasonable where driver traveled and abruptly stopped in breakdown lane behind state trooper's vehicle); *Matter of Clayton*, 748 P.2d 401, 402 (Idaho 1988) (opening car door and removing keys from vehicle reasonable where driver slumped forward in vehicle with lights on and motor running in parking lot). Additionally, the fact that the officer did not use the least intrusive means of making contact with East does not by itself render the decision to open the door unreasonable. *See Cady*, 413 U.S. at 447.

¶13 East also briefly argues Officer Chrispen's later seizure of him, which occurred when the officer ordered him out of the car, was not supported by reasonable suspicion. Specifically, East contends his own actions in moving the car were "the result of the officer's opening the door in violation of the emergency aid exception." As explained above, however, there was no impropriety in opening the door. Additionally, reasonable suspicion requires only that an officer articulate "some minimal, objective justification" for a seizure, which a court reviews by looking at the totality of the circumstances. *State v. Teagle*, 217 Ariz. 17, ¶¶ 25-26, 170 P.3d 266, 272-73 (App. 2007). Here, the officer testified that due to East's appearance when he looked in the window, coupled with his shifting the car into gear when the door was opened, as well as his

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that the search must be strictly circumscribed by the exigency that justified it. *See Tiffany O.*, 217 Ariz. 370, ¶ 21, 174 P.3d at 376.

clothing and "everything that was going on," he initially thought East was "under the influence of something," even if it was not alcohol. In its ruling, the trial court noted that although the state established the community-caretaker exception applied, East's actions in shifting the gear also supported a lawful investigative detention based on a suspicion that East had been driving under the influence. We agree with that conclusion. The trial court did not err in denying the motion to suppress.

Disposition

¶14 For the foregoing reasons, East's conviction and sentence are affirmed.